

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUL 29 1993

OFFICE OF
MANAGING DIRECTOR

Lauren A. Colby, Esq.
P.O. Box 113
Frederick, Maryland 21705-0113

93-96

Dear Mr. Colby:

This is in response to your request for hearing fee refund submitted on behalf of Adam D. Gearheart (Gearheart), the successful applicant for a new FM radio broadcast station at Harold, Kentucky.

You state that Gearheart tendered a hearing fee in the amount of \$6,760. You also state that on the Notice of Appearance deadline, Gearheart and the remaining applicant filed a Settlement Agreement that contemplated universal settlement of this proceeding. Because this Agreement has been granted and the proceeding terminated, see Memorandum Opinion and Order, FCC 93M-280, released May 20, 1993, you now request that Gearheart's hearing fee be refunded.

Section 1.1111(b)(4) of the Commission's rules provides for refund of the hearing fee in cases where a settlement agreement, filed by the Notice of Appearance deadline, provides for the dismissal of all but one of the applicants and the surviving application is immediately grantable or if matters specified in the designation order can be deleted. 47 C.F.R. § 1.1111(b)(4). Because Gearheart participated in a timely filed agreement that resulted in settlement of this proceeding, the hearing fee may be returned.

Accordingly, a check for \$6,760.00, payable to the maker of the original check, will be forwarded to you at the earliest practicable time. If you have any questions about this refund, please call the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermott

Marilyn J. McDermott
Associate Managing Director
for Operations

Doug *Lauren A. Colby*
ATTORNEY AT LAW
POST OFFICE BOX 113
FREDERICK, MARYLAND 21705-0113

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TELEPHONE
(301) 663-1086
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May 24, 1993

9/2/93 11:00 AM

VIA FEDERAL EXPRESS

Mr. Andrew S. Fishel
Managing Director
F.C.C.
1919 M Street, N.W.
Room 852
Washington, D.C. 20554

Dear Mr. Fishel:

On April 7, 1993, the FCC issued a Hearing Designation Order, directing that a comparative hearing be held to determine whether the application of ~~Adam D. Gearheart~~, for a construction permit for a new FM broadcast station at Harold, Kentucky, or the conflicting application of Robert G. Picklesimer, should be granted. Administrative Law Judge Joseph Stirmer was designated to preside.

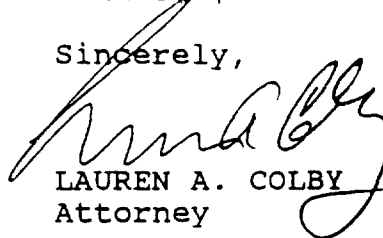
As permitted by Section 73.3525 of the Commission's Rules, the parties entered into negotiations looking towards a settlement of their differences prior to the trial phase of the proceeding. A settlement agreement was duly entered into and timely filed, providing for the dismissal of the Picklesimer application and grant of the Gearheart application, in consideration of the payment by Gearheart to Picklesimer of a sum of money equal to either (a) \$14,000; or (b) the actual expenses legitimately and prudently incurred by Picklesimer in connection with the preparation, filing and advocacy of his application. That agreement has now been approved by the ALJ, and a copy of the ALJ's Memorandum Opinion and Order is enclosed.

In negotiating these arrangements, a member of my staff spoke to a member of your staff, Ms. Claudette Pride, who was of the opinion that if the matter could be timely resolved prior to the date for the filing of notices of appearance, Mr. Gearheart

Mr. Fishel
May 24, 1993
page 2

would be entitled to a return of his hearing fee. That was accomplished and I hereby respectfully request that you refund Mr. Gearheart's hearing fee in the sum of \$6760.00.

Sincerely,



LAUREN A. COLBY
Attorney

LAC/tdm

Enclosure

cc: Ms. Claudette Pride
Mr. Adam Gearheart

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 93M-280
31559

In re Applications of)	MM DOCKET NO. 93-96
)	
ADAM D. GEARHEART)	File No. BPH-920102MC
)	
ROBERT G. PICKLESIMER)	File No. BPH-920109MB
)	
For Construction Permit for a)	
New FM Station on Channel 285A)	
in Harold, Kentucky)	

MEMORANDUM OPINION AND ORDER

Issued: May 18, 1993 ; Released: May 20, 1993


1. Under consideration are a "Joint Motion for Approval of Agreement" filed by Adam D. Gearheart (Gearheart) and Robert G. Picklesimer (Picklesimer) on April 27, 1993; a supplement thereto filed by Gearheart on April 29, 1993; a supplement to the joint motion filed by Picklesimer on May 3, 1993; and "Mass Media Bureau's Comments in Support of Joint Motion for Approval of Agreement" filed by the Bureau on May 11, 1993.

2. Gearheart and Picklesimer have entered into a settlement agreement and have submitted the agreement for approval. Pursuant thereto, Picklesimer has agreed to dismiss his application in exchange for the payment of \$14,000 (or the amount approved by the Commission, whichever is less) from Gearheart. Picklesimer has shown by appropriate documentation that he has incurred legitimate and prudent expenses in excess of \$14,000.

3. The joint motion and supporting materials submitted by the applicants satisfy the requirements of Section 73.3525 of the Commission's Rules, which implement Section 311(c)(3) of the Communications Act of 1934, as amended. In this connection, the applicants have established that neither application was filed for an improper purpose, and that approval of the agreement would serve the public interest. Moreover, payment to the dismissing applicant, as previously noted, is not in excess of legitimate and prudent expenses incurred in the prosecution of the application.

Accordingly, IT IS ORDERED that the "Joint Motion for Approval of Agreement" filed by Adam D. Gearheart and Robert G. Picklesimer on April 27, 1993, and supplemented on April 29, 1993, and May 3, 1993, IS GRANTED; the agreement IS APPROVED; payment in the amount of \$14,000 to Robert G. Picklesimer IS AUTHORIZED; the application of Robert G. Picklesimer (File No. BPH-920109MB) IS DISMISSED, with prejudice; the application of Adam D. Gearheart (File No. BPH-920102MC) for a construction permit to build a new FM station on Channel 285A in Harold, Kentucky, IS GRANTED; and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Joseph Stirmer
Chief Administrative Law Judge